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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,076	01/25/2001	Michael D. Krysiak	P/35-4	7143

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EXAMINER	
VALENTI, ANDREA M	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/769,076	KRYSIAK ET AL.	
	Examiner	Art Unit	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 April 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *26-30,32,38,47,50 and 52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26-30,32,38,47,50 and 52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: all of the references numbers in Figs. 1, 2, 4, 5, 6A-D, and 8. Corrected drawing sheets, or amendment to the specification to add the reference character(s) in the description, are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 26-30, 38, 50, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 4,126,417 to Edwards.

Regarding Claim 26 and 50, Stevens teaches a colored mulch product (Stevens abstract and Col. 6 line 35) consisting essentially of a material comprising a fiber cellulose, clay, loam, sand and/or combination; a binding agent; a dye and/or pigment;

Stevens does not explicitly teach that the dye indicates to a user environmental conditions of soil where the mulch is placed and the color fades or disappears in response to a lack of nutrient or fertilizer in the mulch. However, Stevens teaches that the mulch product contains fertilizer (Stevens Col. 4 line 50 and abstract) and Edwards teaches that it is old and notoriously well-known in the art to color fertilizer (Edwards Col. 4 line 12). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Stevens with the teachings of Edwards for the reasons set forth by Edwards (Edwards Col. 1 line 27-28). This modification inherently teaches that the mulch color changes as the fertilizer, which is one component of the overall mulch product, penetrates the soil since the color of the fertilizer fades indicating a lack of nutrient in the mulch.

Regarding Claim 27, Stevens as modified teaches nitrogen, phosphorous, and potassium fortifiers (Stevens abstract last line).

Regarding Claims 28-30, Stevens as modified teaches the dye inherently indicates to the user the acidity of the soil; dye indicates to a user the moisture content of the soil; the chemical content of the soil.

Regarding Claim 38, Stevens as modified teaches the mulch is the same or similar color of an actual plant, flower, fruit, or vegetable of a seed planted to the mulch (Stevens Col. 6 line 37).

Regarding Claim 52, Stevens as modified inherently teaches a method for adjusting the chemical content of soil by placing a colored mulch on top of the soil (Stevens abstract); changing colors of the mulch based on condition of the soil; adding chemicals to the soil based on the color of the mulch (Edwards teaches that additional nutrients are required when previous applications have been depleted Col. 4 line 55-58).

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens as applied to claim 26 above, and further in view of U.S. Patent No. 5,734,167 to Skelty.

Regarding Claim 32, Stevens as modified is silent on the dye is florescent. However, Sketly teaches it is old and notoriously well-known to dye agricultural products with florescent dye (Skelty Col. 1 line 35-45). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention to enable safe night time agricultural operations as taught by Skelty (Skelty Col. 1 line 1-26).

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens

Regarding Claim 47, Stevens teaches a colored mulch product comprising a material of a fiber, cellulose, clay, loam, or sand and/or a combination of the same; a binding agent; and a dye and/or pigment (Stevens abstract), but is silent on the colored mulch product produced by an agglomeration operation. However, it would have been

obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely and engineering design choice of selected an alternate equivalent old and well-known means of manufacturing that is notoriously well-known for use in manufacturing fertilizers and is commonly used for application of a binding and coloring agent to an object. One of ordinary skill in the art would modify the teachings with this known equipment for an efficient means of manufacturing the fertilizer and for thoroughly coating the cellulosic material with binding agent and dye.

Response to Arguments

Applicant's arguments filed 16 April 2004 have been fully considered but they are not persuasive.

The declaration supplied by Lee Hoffmann on 19 March 2004 is insufficient to over come the teachings of the cited prior art. Stevens teaches that it is old and notoriously well-known to combine fertilizer with mulch to produce a 'mulch product' (Stevens abstract last line). Examiner maintains that Edwards teaches that it is old and notoriously well-known in the art to color fertilizers, fungicides, and insecticides for safety and convenience (Edwards Col. 1 line 27-29). Examiner maintains that it would have been obvious to one of ordinary skill in the art to utilize the colored fertilizer of Edwards in the mulch product of Stevens. This modification inherently results in the advantage of informing the user about environmental conditions of the soil since as the fertilizer penetrates the soil the color of the mulch product is going to change since the fertilizer color will become absent from the mulch product. Edwards is cited ***only*** to teach that it is well-known, that it is accepted wisdom in the field, to color fertilizer.

Skelly is cited to merely to teach that it is well-known in the art to color agricultural products with florescent colors to help identify areas for farming at nighttime. It would have been obvious to one of ordinary skill in the art to modify the teachings of Stevens at the time of the invention with the florescent coloring of Skelly as an indicator of areas where the crops are planted versus unplanted areas during nighttime farming. Stevens teaches that the mulch is colored and modifying Stevens with the teachings of Skelly is merely the selection of an alternate equivalent color for the advantage of nighttime identification.

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Examiner
Art Unit 3643

28 June 2004

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600